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June 21, 1999

Dale Parrish  
511 16<sup>th</sup> Street, Suite 600  
Denver, CO 80202-4231

Re: People v. Philip C. Freytag, 98 CR 2462

Dear Mr. Parrish:

Please be advised that the case of the People of The State of Colorado v. Philip C. Freytag, 98 CR 2462, Division, District Court, El Paso County, Colorado, was dismissed on June 18, 1998 by the District Court at the request of the District Attorney. Based on the dismissal and Mr. Freytag's lack of a criminal record, I filed a Verified Petition to Seal Arrest and Criminal Records Pursuant to Section 24-72-308, C.R.S., as amended. C.R.S., as amended, 24-72-308 permits the sealing of any arrest and criminal records information pertaining to a person in interest who was not charged or whose case was completely dismissed or in any case, in which a person in interest was acquitted.

The sealing affects all records except basic identification information. The Court is not required to seal records when a case is dismissed, but is required to conduct a hearing and make a finding as to whether or not the harm to the privacy of the Petitioner or dangers of unwarranted adverse consequences to the Petitioner outweigh the public interest in retaining the records. If the Court so finds, the Court may order such records to be sealed except for basic identification information. The Court in this case did enter an Order sealing the records of The People of the State of Colorado v. Philip C. Freytag, 98 CR 2462, and records of Colorado Springs Police Department, Case No. 97-36997. The records ordered to be sealed are all criminal justice records and information relating to the two above cases that are in the custody and control of the District and County Courts of the Fourth Judicial District, the District Attorney for the Fourth Judicial District, the Colorado Bureau of Investigation, the Fremont County Sheriff's Office, the Colorado Springs Police Department, and the Canon City Police Department. The Court also granted the motion to seal the civil case upon which the petition was granted.

Upon the entry of an order seal the records, the Petitioner and all justice agencies may properly reply, upon any inquiry into the matter, that no such record exists with respect to that person. Inspection of the records is only permitted by the Court and only upon petition of the person who is the subject of such records or by the prosecuting attorney and only for the purposes named in such petition. No employer, educational institution, state and local government agency, official, and employees shall require an applicant to disclose any information contained in sealed records. This section does not apply to arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning the arrest and criminal justice information or criminal justice records is made by another criminal justice agency. Any person who violates the statute is guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than \$100.00 or by imprisonment in the county jail for not more than 90 days or both such fine and imprisonment.

It has been my experience that once an order to seal has been entered, all records of the District Court will be placed in an envelope and sealed. The records of the District Attorney will be placed in an envelope and sealed. If there is a co-defendant, the name of the Petitioner will be blacked-out of the police reports in the co-defendant's file. The same will hold true with the Colorado Springs Police Department. I can not speak to the Fremont County Sheriff's Department nor the Canon City Police Department's policy regarding these issues. In any case, any investigative report, witness statement, computer entry, audio tape, or associated material regarding said information, and any disposition of records or Court schedules must be permanently sealed as the identification information of the Petitioner. All criminal justice agencies may properly relay, upon inquiry into the matter, that no such record exists in respect to the Petitioner.

I have also enclosed a copy of the tendered order the Judge granted. The judge will be forwarding a verified copy to me through self-addressed stamped envelope. When I receive that, I will forward a copy of signed order to you as well.

As to the specific offenses charged against Mr. Freytag, namely criminal extortion and conspiracy to commit criminal extortion, all parties, the police, and Mr. Freytag can honestly say that no such record exists with respect to the Petitioner. It is therefore virtually impossible to show or allege that Philip C. Freytag did anything to extort anything from anyone regarding this case, much less conspire with anyone to commit extortion or that anyone conspired with him to commit extortion. The police officers could not testify to anything that Mr. Freytag did that would aid another party in any extortion. For these reasons, only the actions of Harmon Wilfred and not the actions of Philip C. Freytag could be used in the prosecution of the related charges faced by Mr. Wilfred. Therefore, it is my opinion that Mr. Freytag may properly respond that no police interview exists that ties him to Harmon Wilfred regarding these instances. A District Attorney would have a difficult time examining Mr. Freytag regarding these occurrences and impeaching him with any prior police reports.

These circumstances would seem to indicate that naming Philip C. Freytag as a co-conspirator with Harmon Wilfred in the extortion case is highly unlikely. Of course, the District Attorney could charge the conspiracy with persons unknown to the District Attorney.

My opinion, as a prosecutor, is these facts make it very difficult to establish the conspiracy plus it makes it difficult to establish any extortion since, in my reading of the police reports, it is based solely on the actions of Mr. Freytag which are presumed to be directed by Mr. Wilfred.

I can not speak to the violation of custody charges.

If you need any other information, please feel free to contact me.

Sincerely,



William A. Aspinwall

Enc  
WAA/sms